

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

_____)	
JOSEPH F. HUTCHINSON, et al.,)	
)	
Plaintiffs,)	
)	CASE NO.
vs.)	C-1-01-789
)	
FIFTH THIRD BANCORP,)	
)	
Defendant.)	
_____)	

Deposition of: RICHARD LEVO

Pursuant to: Notice

Date and Time: Tuesday, May 31, 2005
1:00 p.m.

Place: Keating, Muething &
Klekamp, PLL
One East Fourth Street
Suite 1400
Cincinnati, Ohio 45202

Reporter: Patti Stachler, RMR, CRR
Notary Public - State of Ohio

Elite Reporting Agency, LLC
513-233-3000

42564046-4089-44ff-8b2a-c9d8c82fea0a

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1 RICHARD LEVO

2 a witness herein, having been duly sworn, was examined
3 and deposed as follows:

4 EXAMINATION

5 BY MR. MEYER:

6 Q. Mr. Levo, would you state your full name,
7 please?

8 A. Richard Vincent Levo.

9 Q. And what is your home address?

10 A. My home address is 5513 Penway Court,
11 Cincinnati, Ohio.

12 Q. Have you ever had your deposition taken
13 before?

14 A. No.

15 Q. The rules are simple. In order to expedite
16 preparing a record by our court reporter, you need to
17 wait 'til I'm finished with any question before you
18 start answering. Likewise, I'll do the same and not
19 answer -- hopefully not ask any questions while you're
20 still answering.

21 Also, if you would, give audible answers. I
22 know we're all used to uh-huhs and shakes of the head,
23 but we can't do that in order to get a clean record.
24 So if you would, give audible answers even if it's only
25 one word. Will you do that?

1 A. Sure.

2 Q. If there's any question that I ask that you
3 do not understand, please ask for a clarification if
4 you don't understand it, because the record will stand
5 with my question and your answer. So be sure and ask
6 me for any clarifications that are needed. Will you
7 agree to do that?

8 A. Yes.

9 Q. How long have you lived at your current
10 address?

11 A. About six years.

12 Q. Who is your employer?

13 A. My employer is Fifth Third Bank.

14 Q. And when did you start with Fifth Third?

15 A. October 14th, 1998.

16 Q. Why don't you give me your employment
17 background before October 14, 1998?

18 A. In what order?

19 Q. Any order you choose.

20 A. Okay. I started with R.L. Polk & Company in
21 1969.

22 Q. What did you do for them?

23 A. I was a personnel assistant.

24 Q. What did you do in that capacity?

25 A. I hired employees, I handled grievances and I

1 evaluated positions.

2 Q. Did you have any responsibilities that
3 related to benefit plans for employees?

4 A. No.

5 Q. And how long did you work for Polk, 1969 to
6 what?

7 A. 1979.

8 Q. Okay. What about after Polk?

9 A. I went to U.S. Shoe Corporation.

10 Q. What years were you there?

11 A. I was there from 1979 to 1990.

12 Q. And what was your job title at U.S. Shoe?

13 A. Initially, it was benefits administrator.

14 Q. For what length of time?

15 A. For about eight years.

16 Q. And then your job title became what?

17 A. Benefits supervisor.

18 Q. Did that title remain until 1990 when you
19 left?

20 A. Yes.

21 Q. After U.S. Shoe, where did you go?

22 A. I went to Blue Cross/Blue Shield.

23 Q. Is that here locally?

24 A. Yes.

25 Q. What was your job title?

1 A. Benefits administrator.

2 Q. And for what years were you at Blue
3 Cross/Blue Shield?

4 A. 1990 to 1993.

5 Q. And from there, where did you go?

6 A. From there, I went to American Express.

7 Q. Years, please.

8 A. 1990 to 1991 -- I'm sorry. 1993 to 1994.

9 Q. Again, your job title at American Express?

10 A. Financial advisor.

11 Q. Then in 1994, where did you go?

12 A. I went to Business Plans, Inc.

13 Q. What kind of company was that?

14 A. They provided benefit plan prototypes, 401(k)
15 plans to clients.

16 Q. Okay. And what were the years that you were
17 with Business Plans, Inc.?

18 A. Let's see. That would be 1994 to 1996.

19 Q. Why did you leave there?

20 A. I found a better opportunity.

21 Q. Where?

22 A. At Sheakley Group.

23 Q. In what capacity?

24 A. As a 401(k) recordkeeper.

25 Q. And, again, the years at Sheakley?

1 A. 1996 to 1998.

2 Q. Is there any significant time that went by
3 between the time you left Sheakley and the time you
4 started at Fifth Third?

5 A. No.

6 Q. Okay. Why did you leave Sheakley?

7 A. Better opportunity at Fifth Third.

8 Q. How did you get the position at Fifth
9 Third?

10 A. I interviewed for it after seeing an ad.

11 Q. Who did you interview with?

12 A. I don't recall.

13 Q. Somebody in HR?

14 A. Yes.

15 Q. Did you interview with Mr. Girton, if you
16 recall?

17 A. No.

18 Q. Was he already there at the time you were
19 hired or not?

20 A. No.

21 Q. So you came before Mr. Girton?

22 A. No.

23 Q. Simultaneously?

24 A. Yes.

25 Q. I think that's what he said. What was your

1 job title at Fifth Third when you were initially
2 hired?

3 A. Benefits administrator.

4 Q. Who was your immediate supervisor?

5 A. Marjorie Rybka.

6 Q. And how long was Ms. Rybka there after your
7 hire?

8 A. Approximately two years.

9 Q. And did you continue to report to her the
10 entire time she was there?

11 A. Yes.

12 Q. And who did she report to, if you know?

13 A. She reported to Jim Girton.

14 Q. When you started in October of 1998, what
15 were your responsibilities, your specific
16 responsibilities?

17 A. I communicated to employees regarding the
18 benefit plans. I helped to file government filings and
19 I processed distributions.

20 Q. Did Ms. Rybka do those same things also, or
21 did she have other responsibilities?

22 MR. FISCHER: Objection to form.

23 BY MR. MEYER:

24 Q. If you know.

25 THE WITNESS: Should I answer that?

1 MR. FISCHER: Go ahead. Unless I tell you
2 not to answer, go ahead and answer it. I need to
3 make my objections for the record.

4 A. Would you repeat the question?

5 BY MR. MEYER:

6 Q. Okay. Did Ms. Rybka also perform those same
7 three functions that you did?

8 MR. FISCHER: Same objection.

9 A. She had other duties.

10 BY MR. MEYER:

11 Q. Did she also have these three duties, in
12 these three areas?

13 A. Not all three.

14 Q. What did you do that she did not?

15 MR. FISCHER: Objection.

16 BY MR. MEYER:

17 Q. I've got communicated to employees,
18 government filings and processed distributions.

19 A. She did not process distributions.

20 Q. Okay. Now, have your duties changed since
21 then?

22 A. Yes.

23 Q. Okay. Do you still communicate to employees
24 regarding benefit plans?

25 A. Yes.

1 Q. Do you still do government filings?

2 A. Yes.

3 Q. Do you still play any role in processing
4 distributions?

5 A. Yes.

6 Q. So your duties have expanded?

7 A. No. The -- I'm responsible for different
8 plans now.

9 Q. Okay. At that time what plans were you
10 responsible for? I'm talking about when you were hired
11 back in October of 1998. Let's use that time frame,
12 those first six months, let's say.

13 A. I was responsible for the Fifth Third profit
14 sharing plan and the Fifth Third 401(k) plan and the
15 Fifth Third pension plan.

16 Q. At that time -- and, again, I'll limit this
17 to the first six months of employment -- or let's make
18 it the first eight months, first six months -- last two
19 months of '98 or last three months and the first six
20 months of '99, did you have any responsibility with
21 regard to the Suburban ESOP?

22 A. No, I don't believe so.

23 Q. When did you first have any responsibility
24 with regard to the Suburban ESOP, if you ever did?

25 MR. FISCHER: Objection to form.

1 A. I'm not sure --

2 MR. FISCHER: Go ahead.

3 A. I'm not sure the date.

4 BY MR. MEYER:

5 Q. What about the general time frame?

6 A. I believe it was in 19 -- or 2000. Early of
7 2000.

8 Q. What is your first function that you recall
9 with regard to that Suburban ESOP?

10 A. The first function I recall is sending out a
11 communication to participants.

12 Q. Do you remember the nature of that
13 communication?

14 A. It was a notice to employees regarding a
15 filing with the IRS.

16 Q. Do you recall the substance of that notice?

17 A. It was the -- a notice to employees that --
18 request for determination letter was being made.

19 Q. Did the employees need to do anything in
20 response to that?

21 A. No.

22 Q. So this was informational only?

23 A. Yes.

24 Q. And --

25 MR. FISCHER: Objection to the extent it

1 calls for a legal conclusion. There are legal
2 issues involved.

3 BY MR. MEYER:

4 Q. When is the last time you've seen that
5 letter, if you recall?

6 A. Last week.

7 Q. To the best of your recollection, what did it
8 say?

9 A. I don't recall exactly.

10 Q. Can you paraphrase it --

11 MR. MEYER: Let's take a break here.

12 MR. FISCHER: Sure.

13 (Off the record.)

14 BY MR. MEYER:

15 Q. Can you give us a paraphrase summary of that
16 letter?

17 MR. FISCHER: Objection to form.

18 A. Attached is a notice regarding the Suburban
19 Federal ESOP plan.

20 BY MR. MEYER:

21 Q. What was the form that was attached?

22 A. The notice to interested parties.

23 Q. I'm sorry?

24 A. Notice to interested parties.

25 Q. Did it have a number in form?

1 A. Not that I recall.

2 Q. Okay. Is it a government form or Fifth Third
3 form?

4 A. It's --

5 MR. FISCHER: Objection.

6 A. -- not a form.

7 BY MR. MEYER:

8 Q. Well, I thought you said, attached is a
9 form -- what did you say was attached? Maybe I didn't
10 hear that right.

11 A. Paraphrase was -- should be, attached is a
12 notice regarding the Suburban Federal ESOP.

13 Q. Okay. Did that notice have a government
14 number on it? Was it an official government notice
15 such as a --

16 A. Not that I recall.

17 Q. Okay. Did you prepare the notice?

18 A. No.

19 Q. Was it a preprinted form?

20 A. No.

21 Q. Who prepared it, to your knowledge?

22 A. Our legal counsel.

23 Q. And what was it a notice of?

24 A. Notice of application to the IRS for a
25 determination letter.

1 Q. Was that in connection with the termination
2 of the Suburban ESOP?

3 A. Yes.

4 Q. Is that the first document that you prepared
5 in relation to the Suburban ESOP, this letter?

6 A. I prepared the letter.

7 Q. Right. Legal counsel prepared the notice, is
8 that what you're saying?

9 A. Yes.

10 Q. Is that the first -- was the letter the first
11 document that you prepared in regard to the Suburban
12 ESOP?

13 A. As I recall, yes.

14 Q. Okay. And do you recall who directed you to
15 send this letter?

16 A. No.

17 Q. In the ordinary course, who would have
18 directed you to send the letter?

19 A. My manager.

20 Q. Who was that at the time?

21 A. I believe it was Marjorie Rybka.

22 Q. And this letter was dated sometime in year
23 2000; is that correct?

24 A. Yes.

25 Q. Okay. What other documents did you review

1 last week?

2 A. I reviewed --

3 MR. FISCHER: You mean for this deposition?

4 MR. MEYER: Right.

5 A. I reviewed some memos with my name on them
6 regarding the plan. I also reviewed some 5500s that
7 were filed for the plan.

8 BY MR. MEYER:

9 Q. Anything else that you recall?

10 A. No.

11 Q. How many different memos were there that had
12 your name on them?

13 A. I don't recall exactly.

14 Q. Was it more than ten?

15 A. I'm not sure.

16 MR. MEYER: Pat, do we have those memos
17 somewhere?

18 MR. FISCHER: They've all been produced.
19 They all have production numbers on them. I can
20 represent he wasn't shown anything that hasn't
21 been produced.

22 BY MR. MEYER:

23 Q. Where are records that you maintain -- or do
24 you maintain any records with regard to the Suburban
25 ESOP, or have you over the years?

1 MR. FISCHER: Objection to form.

2 A. I've maintained communications.

3 BY MR. MEYER:

4 Q. Where do you keep those?

5 A. I'm not sure where they are right now.

6 Q. Where were they last when you saw them?

7 A. Last time I saw them, they were in a folder
8 in my office.

9 Q. In your office?

10 A. Uh-huh.

11 Q. About when was that?

12 A. I'm not sure. It was several years ago.

13 Q. And what happened to them from your office,
14 where did they go?

15 A. I'm not sure.

16 Q. Who took them?

17 A. I don't know.

18 Q. So one day they're in your office, the next
19 day they're gone and you don't know who took them?

20 A. I know no one took them.

21 Q. Did you give them to someone?

22 A. I'm not sure.

23 Q. So you don't know what happened to them?

24 A. Right.

25 MR. FISCHER: For the record, I'll represent

1 his files have been produced.

2 BY MR. MEYER:

3 Q. So what would your files consist of as they
4 relate to the Suburban ESOP?

5 A. Currently?

6 Q. No. The files that you had and that have
7 been produced to us upon representation of counsel,
8 what would those files have consisted of that were in
9 your office at one time?

10 A. The communications sent to participants.

11 Q. The memos that you reviewed last week,
12 what -- tell me about any one of them that you recall
13 and what it said.

14 MR. FISCHER: Objection to form.

15 A. The one we already discussed with the notice
16 to interested parties. There was also a memo to
17 participants saying, here is your account statement.

18 BY MR. MEYER:

19 Q. What's an account statement?

20 A. Account statement would be the number of --
21 the value of their account in the plan as of a certain
22 date.

23 Q. During the time you were at Fifth Third, do
24 you know how many of those account statements went out
25 to employees?

1 A. I'm not sure.

2 Q. Is that an annual statement?

3 A. Yes.

4 Q. And you don't know how many years it went out
5 while you were there?

6 A. I'm not sure.

7 Q. Was it more than one year?

8 A. Yes.

9 Q. And how do you -- is there a -- where do you
10 get the information to send out these account
11 statements?

12 A. From our trust department, Fifth Third trust
13 department.

14 Q. And what does the trust department provide to
15 you so that you know the value of these account
16 statements?

17 A. The actual statements themselves.

18 Q. Do you get a list of the participants in a
19 plan so that you know who gets the account
20 statements?

21 A. Yes.

22 Q. And what kind of a document is that?

23 A. Would be an Excel spreadsheet.

24 Q. Is it called a roster of participants, or
25 what do you call it?

1 A. I call it a mailing list.

2 Q. So when it comes time to send out an account
3 statement, for example, on the Suburban ESOP, what is
4 your role? Tell me what you do from beginning to end
5 when you get the statement from your trust department.

6 A. I put --

7 MR. FISCHER: Objection to form. Go ahead.

8 A. I put a letter with the statement explaining
9 what it is, put it with the statement and mail it
10 out.

11 BY MR. MEYER:

12 Q. You do not do any calculations of value
13 yourself?

14 A. No.

15 Q. That all takes place where, in the trust
16 department?

17 A. Yes.

18 Q. Let's say for the years 2000, 2001, who would
19 have been the person ultimately responsible in the
20 trust department for putting together those
21 statements?

22 A. Brian Thamann.

23 Q. Is that B-r-i-a-n?

24 A. Yes.

25 Q. Thamann?

1 A. T-h-a-m-a-n-n.

2 Q. Is he still with Fifth Third?

3 A. Yes.

4 Q. What department is he in?

5 A. Trust department.

6 Q. Does he still play the same role with regard
7 to these account statements?

8 A. Not anymore.

9 MR. FISCHER: I was going to say,
10 objection.

11 BY MR. MEYER:

12 Q. Who would be his successor in that
13 responsibility?

14 A. The Fifth Third Bank does not administer --
15 or does not do the recordkeeping for clients anymore.

16 MR. FISCHER: Rick, that was why my
17 objection -- it wasn't -- didn't make sense under
18 the circumstances.

19 MR. MEYER: Right.

20 BY MR. MEYER:

21 Q. Now, in what format would you have this
22 mailing list, as you call it? What would it look
23 like?

24 A. Had the person's name, first name, last name;
25 street address, city, state, zip code.

1 Q. That document itself would not have
2 information about the number of shares in that person's
3 account or the value of the shares?

4 A. No.

5 Q. That would be a different document?

6 A. I suppose.

7 Q. Did you see those other documents that were
8 actually sent out to the employees that showed their
9 account statements?

10 A. Yes.

11 Q. Okay. And what information was on those
12 sheets or documents?

13 A. The only thing I recall is that it would have
14 the date -- effective date and the value. I don't
15 recall anything else.

16 Q. Was there anything different about the
17 Suburban ESOP account statements different from other
18 account statements at Fifth Third?

19 A. Not that I recall.

20 Q. So any account statement at Fifth Third would
21 typically have an effective date and the value?

22 A. Yes.

23 Q. Would it identify the plan, would it not?

24 A. Yes.

25 Q. So a particular employee could have -- could

1 be a participant in various plans, could they not?

2 A. Yes.

3 Q. Would they have one account statement showing
4 the values in each plan or would they get multiple
5 statements, one for each plan they're participating
6 in?

7 A. Multiple statements.

8 Q. Does Fifth Third keep copies of those account
9 statements?

10 A. Fifth Third, yes.

11 Q. Do you know where they're kept?

12 A. Trust department.

13 Q. Would you suspect that, in the ordinary
14 course, account statements for the Suburban ESOP
15 participants would be in the trust department at Fifth
16 Third?

17 MR. FISCHER: Objection to form.

18 A. Would you repeat the question?

19 BY MR. MEYER:

20 Q. In the ordinary course of recordkeeping at
21 Fifth Third, would you expect that the account
22 statements for the participants in the Suburban ESOP
23 would be in the Fifth Third trust department?

24 MR. FISCHER: Objection.

25 A. At the time they're produced.

1 BY MR. MEYER:

2 Q. Do you know how long they keep those
3 statements?

4 A. No, I don't.

5 Q. Did you play any role in the termination of
6 the Suburban ESOP?

7 A. Yes.

8 Q. And could you describe that role, each
9 function that you performed?

10 A. I notified employees that we had applied to
11 the IRS for a determination letter regarding the
12 termination.

13 Q. Is that the same letter you talked about
14 before?

15 A. Yes.

16 Q. Okay.

17 A. I also notified employees that the IRS had
18 approved or had sent a determination letter that
19 allowed us to proceed with termination. And I
20 processed distributions as a result of the termination
21 to plan.

22 Q. When you process those distributions, tell me
23 about that process and your role in that process.

24 MR. FISCHER: Objection to form.

25 A. The process would be to mail a form -- a

1 request form to the participant and, when it was
2 received back from the participant, follow the
3 instructions as requested by the participant.

4 BY MR. MEYER:

5 Q. Okay. And what was the nature of the request
6 form? What information were you seeking through that
7 form?

8 A. Whether the employee wanted to roll over
9 their value of their account and whether or not they
10 wanted to receive cash or stock. And if it was to be a
11 rollover, what institution the distribution should be
12 made payable to.

13 Q. Did this request form for the Suburban ESOP
14 differ in any respect from any other rollover cash or
15 stock option form that you would send out?

16 A. Just the title of the plan --

17 Q. Who prepared --

18 A. -- as I recall.

19 Q. Who prepared the form?

20 A. Our legal counsel.

21 Q. Who would that have been?

22 A. Keating, Muething & Klekamp.

23 Q. Did this form advise the recipient that there
24 was a -- kind of a tax, depending on what option was
25 chosen?

1 MR. FISCHER: Objection.

2 A. There was a special notice -- special tax
3 notice that accompanied the form.

4 BY MR. MEYER:

5 Q. Who prepared that?

6 A. Our legal counsel.

7 Q. What did that special tax notice provide
8 for?

9 A. The IRS regulations regarding the taxation of
10 distributions.

11 Q. Do you know what those regulations state?

12 MR. FISCHER: Objection.

13 A. Yes, in general.

14 BY MR. MEYER:

15 Q. Okay. Tell us, in general, what they state.

16 A. They state that if a distribution is rolled
17 over, taxes are deferred. If the distribution is
18 payable to the participant, the -- not rolled over --
19 it is a taxable event. And that there may be a 10
20 percent penalty applicable if a distribution is
21 received prior to retirement.

22 Q. And that special tax notice was sent to the
23 participants of the Suburban ESOP?

24 A. Yes.

25 Q. Did that special tax notice differ in any way

1 from other such notices sent out for other Fifth Third
2 plans?

3 A. No.

4 Q. Did you keep track of how many employees --
5 or how many participants in the Suburban ESOP chose the
6 rollover option?

7 A. No.

8 Q. As you sit here today, you don't know how
9 many chose to roll it into a Fifth Third plan?

10 A. No, I don't know.

11 Q. What options did they have as far as Fifth
12 Third plans to roll over their value of the Suburban
13 ESOP account?

14 A. If they were a current participant -- current
15 employee of Fifth Third, they were permitted to roll
16 the plans -- the Suburban plan distribution into the
17 Fifth Third profit sharing plan.

18 Q. Now, do you recall when you were -- when you
19 first became aware of this lawsuit against Fifth Third
20 by certain Suburban ESOP participants?

21 A. I don't recall.

22 Q. Do you recall signing any documents with
23 regard to this lawsuit?

24 A. I did not.

25 Q. You did not?

1 A. (Shaking head.)

2 Q. You don't recall signing any discovery
3 answers, interrogatories?

4 A. No, I don't recall signing anything.

5 Q. As far as the terms of the Suburban ESOP
6 plan, have you ever read the plan?

7 A. Yes.

8 Q. Okay. And for what purpose did you read the
9 plan?

10 A. So I could answer questions from
11 participants.

12 Q. And do you recall when you first familiarized
13 yourself with the terms of this plan in order to answer
14 questions from participants?

15 A. No, I don't recall.

16 Q. Is that a responsibility that you took over
17 from Marjorie Rybka?

18 A. Yes.

19 Q. Do you recall when you took over that
20 responsibility?

21 A. No, I don't.

22 Q. Was it when she left, or were you doing it
23 while she was still there?

24 A. I don't recall.

25 Q. Now, what documents did you read to become

1 familiar with the plan?

2 A. Plan document and amendments.

3 Q. And the amendments?

4 A. Yes.

5 Q. If I say the 1999 amendments to the Suburban
6 ESOP, you know what I'm referring to?

7 A. No.

8 Q. Are you familiar with an amendment that
9 allowed non-Suburban Fifth Third employees to become
10 participants in the Suburban ESOP?

11 A. Yes.

12 Q. And is that a plan document that you read at
13 the time so that you could answer participants'
14 questions about that?

15 A. I'm not sure what your question is.

16 Q. Let me ask it a different way. Are you aware
17 of an amendment to the plan that permitted Fifth Third
18 employees who are not formerly Suburban employees to
19 participate in the Suburban ESOP?

20 A. Yes.

21 Q. Did you play any role in that plan
22 amendment?

23 A. No.

24 Q. So you simply read it after the fact?

25 A. Yes.

1 Q. Did you field any questions from Suburban
2 employees who were not Fifth Third employees who
3 questioned you about why Fifth Third employees were
4 allowed to enter into the plan?

5 A. I don't recall answering --

6 Q. So you don't ever recall a Suburban employee
7 asking you the question as to why Fifth Third is
8 allowing its employees into this plan?

9 A. I don't recall talking to any Suburban
10 Federal participant regarding that.

11 Q. Do you recall attending any meeting -- a
12 meeting or any meetings with Fifth Third -- with
13 Suburban Federal employees with regard to the plan?

14 A. No.

15 Q. Okay. Do you know what an ESOP suspense
16 account is?

17 A. No.

18 Q. Do you consider yourself an expert on
19 ESOPs?

20 A. No.

21 Q. What is your -- you've been in employee
22 benefits for some time with different employers. What
23 is your experience with ESOP, ESOPs?

24 A. The Suburban Federal ESOP was the first ESOP
25 plan that I can recall being aware of.

1 Q. Okay. Let me show you what's previously been
2 marked as Exhibit 19. Is that your signature which
3 appears on the first page of Exhibit 19?

4 A. Yes.

5 Q. And you signed this document on April 16,
6 2001, it appears?

7 A. Yes.

8 Q. And what is this document?

9 A. This is a form 5500.

10 Q. What is that?

11 A. It is the annual report to the government
12 regarding the plan -- benefit plan.

13 Q. In this case it's the Suburban ESOP; is that
14 correct?

15 A. That's correct.

16 Q. And that's for the plan year ending June 30,
17 2000; is that correct?

18 A. Yes.

19 Q. And it appears that you're signing in the
20 capacity of plan administrator? Is that what it
21 appears?

22 A. Yes.

23 Q. Were you the plan administrator for this
24 Suburban ESOP?

25 A. No.

1 Q. Who was the plan administrator, to your
2 knowledge?

3 A. The Fifth Third pension and profit sharing
4 committee.

5 Q. Okay. Who was that?

6 A. A group of Fifth Third executives.

7 Q. Okay. So they were all employees of Fifth
8 Third?

9 A. I'm not sure.

10 Q. What you know is they were Fifth Third
11 executives; is that correct?

12 A. Yeah, to the best of my knowledge.

13 Q. Okay. Did you work with that committee in
14 any capacity?

15 A. No.

16 Q. What was the source of your knowledge about
17 this committee?

18 A. The committee was responsible for making
19 decisions regarding the plans.

20 Q. And how do you know that if you didn't work
21 with them? Just tell me what you know about this
22 committee.

23 MR. FISCHER: Objection to form.

24 A. I received information from Jim Girton
25 regarding decisions made by the committee.

1 BY MR. MEYER:

2 Q. Do you know of any decisions made by this
3 committee with regard to the Suburban ESOP?

4 A. I'm not sure.

5 Q. But it would be your understanding this
6 committee administered the Suburban ESOP? That's your
7 understanding?

8 A. The committee was the designated plan
9 administrator.

10 Q. Were you signing on behalf of this committee
11 when you signed this form 5500?

12 A. Yes.

13 Q. Okay. So was there any specific manner in
14 which they authorized you to sign on their behalf, or
15 did you generally have the authority to sign government
16 filings on behalf of this committee?

17 A. I generally had the authority.

18 Q. Who else had the authority to sign on behalf
19 of this committee, if you know?

20 A. Jim Girton would have had the authority.
21 Marjorie Rybka would have had the authority.

22 Q. Now, did you have any role in preparing
23 Exhibit 19, this form 5500?

24 A. Yes.

25 Q. And could you describe for us what your role

1 was?

2 A. My role was to complete the information in
3 the form.

4 Q. Let's look at page 2 of Exhibit 19, item 6.
5 Total number of participants at the beginning of the
6 plan year. Do you see that?

7 A. Yes.

8 Q. And what was that number?

9 A. 1,696.

10 Q. Now, where would you get that information in
11 order to put that information on this form?

12 A. From the trust department, Fifth Third trust
13 department.

14 Q. And mechanically how would that be provided
15 to you?

16 A. By e-mail.

17 Q. How would they know that you're interested in
18 that information? Would you send them an e-mail
19 saying, tell me how many participants at the beginning
20 of the plan year?

21 A. Yes.

22 Q. There's not a -- you don't send this form to
23 them and have them fill out as much as they know? You
24 simply ask the various people for specific bits of
25 information; is that correct?

1 A. That's correct.

2 Q. And if you want to know the number of
3 participants in a plan at a particular time, the people
4 you would go to would be the trust department; is that
5 right?

6 A. Yes.

7 Q. And what about 7a where it says, Active
8 participants, what is that number?

9 A. 995.

10 Q. And where would that information come from?

11 A. From the trust department, also.

12 Q. And what is meant by an active participant?

13 A. Active participant is one who is still
14 employed by the organization.

15 Q. And 7c, what is that number?

16 A. 645.

17 Q. And where would you obtain that
18 information?

19 A. From the trust department.

20 Q. And what does that number represent?

21 A. Other retired or separated participants
22 entitled to future benefits.

23 Q. Again, on page 2 under item 8, Benefits
24 provided under the plan, where it says 8a, it's marked
25 with an X for pension benefits. Where would you get

1 that information?

2 A. From my knowledge.

3 Q. From your knowledge of this particular
4 Suburban ESOP; is that correct?

5 A. Yes.

6 Q. You knew that was a pension benefit plan?

7 A. Yes, I did.

8 Q. And what would the other choices be?

9 A. The other choices are -- b is welfare
10 benefits, c is fringe benefits.

11 Q. Give me an example of a fringe benefit.

12 A. Fringe benefit might be a spending account
13 plan.

14 Q. The next item is, Plan funding arrangement.
15 What did you mark for that?

16 A. For 9a I marked 3, trust.

17 Q. And what did you mean to indicate by that?

18 A. The assets of the plan were held in a
19 trust.

20 Q. And who was the trustee, to your knowledge?

21 A. Fifth Third Bank.

22 Q. And to whom were they holding it in trust
23 for?

24 A. For the participants that applied.

25 Q. How does 9a differ from 9b?

1 A. 9b is the means in which the -- the source of
2 which the benefits are distributed.

3 Q. You're indicating trust for that also?

4 A. Yes.

5 Q. And explain what's meant by that.

6 A. The trust issues the distribution in the form
7 of a check or shares.

8 Q. And on page 3 of Exhibit 19, what did you
9 check for item 10 and tell us what that means?

10 A. I'm sorry. What was the --

11 Q. Page 3.

12 MR. FISCHER: I'm going to object.

13 BY MR. MEYER:

14 Q. Item 10.

15 MR. FISCHER: There are several checks in
16 item 10.

17 BY MR. MEYER:

18 Q. Tell us what information you've checked and
19 what that means.

20 MR. FISCHER: Same objection.

21 A. Information I checked was the schedules
22 attached to the form 5500.

23 BY MR. MEYER:

24 Q. What schedules were attached?

25 A. Schedule T, Schedule E, Schedule H,

1 Schedule C, Schedule P.

2 Q. Okay. What information is on Schedule T? We
3 don't have the attachments, to my knowledge.

4 A. It's on -- I have the attachment.

5 MR. FISCHER: I see C and E.

6 A. T is the last one.

7 BY MR. MEYER:

8 Q. Okay. So they're not in the same order.
9 Okay. That's fine.

10 MR. FISCHER: I see H.

11 BY MR. MEYER:

12 Q. On the copy that you have of Exhibit 19, are
13 all the schedules that referenced other in item 10, are
14 they all attached to your copy of the exhibit?

15 MR. FISCHER: Objection. Document speaks for
16 itself.

17 A. Yes.

18 BY MR. MEYER:

19 Q. If you'll look at page 4 of Exhibit 19, what
20 information were you providing under Schedule C?

21 MR. FISCHER: Objection.

22 A. Information I was providing was the fees paid
23 to service organizations.

24 BY MR. MEYER:

25 Q. The only one noted here is Keating,

1 Muething & Klekamp; is that correct?

2 A. That's correct.

3 Q. Do you know of any other law firms who
4 provided any services to the Suburban ESOP other than
5 the Keating firm?

6 A. None, that I know of.

7 Q. The next schedule that I have is Schedule E,
8 which if you'll look at the bottom of the page has a
9 Bates number of SU0255. Do you see that?

10 A. Yes.

11 Q. What is the ESOP annual information that is
12 provided in a schedule such as Schedule E?

13 MR. FISCHER: Objection.

14 A. Well, there's several areas.

15 Q. Let me ask you about the first one. The
16 question is whether there's an outstanding securities
17 acquisition loan. Do you see that in 1a?

18 A. Yes.

19 Q. You answered no; is that correct?

20 A. That's correct.

21 Q. How would you know there was not an
22 outstanding loan?

23 A. I wasn't aware of any loan.

24 Q. How would you check that?

25 A. I'm not sure how I checked it.

1 Q. Do you recall ever seeing loan documents with
2 regard to this loan?

3 A. No.

4 Q. Do you know what an acquisition loan is for
5 an ESOP?

6 A. No.

7 Q. But somehow you determined that there was not
8 an outstanding loan as of this plan year; is that
9 correct?

10 A. Yes.

11 Q. Where -- what documents would you look for to
12 see whether they -- there was an outstanding loan?

13 A. I'm not sure.

14 Q. Do you know if that's something the trust
15 department would have information on?

16 A. I'm not sure.

17 Q. Schedule H to this form 5500 relates to
18 financial information about the plan; is that
19 correct?

20 A. Yes.

21 Q. Okay. And if you'll look at item d1, do you
22 see that?

23 A. Yes.

24 Q. There were employer securities at the
25 beginning of the year of about \$1.6 million; is that

1 right?

2 A. Yes.

3 Q. And by the end of the year it was about \$2.25
4 million?

5 A. Yes.

6 Q. Now, where would you get that information?

7 A. From the trust department.

8 Q. And on what kind of a document?

9 A. A trust statement.

10 Q. Now, mechanically in what format would you
11 get a trust statement?

12 A. Paper form.

13 Q. Now, is that a document that you kept in your
14 office?

15 A. I would have, yes.

16 Q. Okay. Is that part of the documents you
17 don't know where they went?

18 A. Right.

19 Q. Would you also have a list of participants
20 other than a mailing list?

21 A. No.

22 Q. So you didn't have to know the value of the
23 participants' accounts to do any of the forms that you
24 filled out, or did you?

25 MR. FISCHER: Objection.

1 A. No.

2 BY MR. MEYER:

3 Q. Now, when it says net assets on this same
4 form H -- Schedule H, the net assets at the end of the
5 year were about 2.25 million; is that correct?

6 A. Yes.

7 Q. Again, is that a number that would be given
8 to you by the trust department?

9 A. Yes.

10 Q. At the time, who actually was preparing these
11 trust documents you're aware of?

12 A. I'm not sure.

13 Q. Would that have been Brian Thamann?

14 A. It might have been.

15 Q. On the next page of Schedule H where it says,
16 Expenses, do you see that?

17 A. Yes.

18 Q. And under Benefit payment and payments to
19 provide benefits, you included a number -- a specific
20 number, did you not?

21 A. Yes.

22 Q. About \$378,000?

23 A. Correct.

24 Q. And where would you get that number?

25 A. From the trust department.

1 Q. And on the last page of Schedule H, item 4e,
2 it asks -- the form asks the question, Was this plan
3 covered by a fidelity bond? Do you see that?

4 A. Yes.

5 Q. The amount of that bond is \$5 million. Do
6 you see that?

7 A. Yes.

8 Q. Did you have any responsibility with regard
9 to that fidelity bond?

10 A. No.

11 Q. Where would you get that information?

12 A. That came from the risk department.

13 Q. And what department is that?

14 A. At Fifth Third. That department handles
15 insurance policies for the corporation.

16 Q. And who is in charge of that department at
17 this time?

18 A. I'm not sure.

19 Q. Do you know anybody in that department?

20 A. I believe Malcom Griggs is the head of
21 that.

22 Q. Do you know how long Mr. Briggs (sic) has
23 been the head of that department?

24 A. No.

25 Q. Okay. Do you know who wrote that fidelity

1 bond?

2 A. No, I don't.

3 Q. Do you know if the issuer of that fidelity
4 bond has been notified of the claim in this case?

5 A. I don't know.

6 Q. If you'll look at the next schedule attached
7 to Exhibit 19, which is Schedule P, do you see that?

8 A. Yes.

9 Q. What's the purpose of this schedule, if you
10 know?

11 MR. FISCHER: Objection.

12 A. Purpose is to confirm that the trust
13 department has provided the plan sponsor with a trust
14 paper.

15 BY MR. MEYER:

16 Q. This says the name of the trust is Suburban
17 Bancorporation, Inc. Employee Stock Ownership Plan. Do
18 you see that under 2a?

19 A. Yes.

20 Q. As of this time, was that Fifth Third?

21 A. No.

22 Q. That was just the name of the trust?

23 A. Yes.

24 Q. And the trustee was Fifth Third?

25 A. That's correct.

1 Q. So when you say who is providing the
2 information, it's not Suburban, it's Fifth Third,
3 right?

4 A. That's correct.

5 Q. And Schedule T, what is the purpose of that
6 schedule to Exhibit 19?

7 A. The purpose of the schedule is to confirm --
8 or to provide information regarding coverage of the
9 plan.

10 Q. And what does this form say about the
11 coverage?

12 MR. FISCHER: Objection.

13 A. The form says that no highly compensated
14 employees benefited under the plan at any time during
15 the plan year.

16 BY MR. MEYER:

17 Q. What about under 2c? Does the employer apply
18 the minimum coverage requirements to this plan on an
19 employer-wide rather than a QSLOB basis? Do you see
20 that?

21 A. Yes.

22 Q. You put down yes?

23 A. Yes.

24 Q. And what is the intent of that information?
25 What is that information?

1 MR. FISCHER: Objection.

2 A. Information is that the coverage requirements
3 are measured on an employer-wide basis rather than
4 employees in the plan.

5 BY MR. MEYER:

6 Q. Have you filled out such forms for other
7 plans other than the Suburban ESOP?

8 A. Yes.

9 Q. Is that one of your routine
10 responsibilities?

11 A. Yes.

12 Q. And how long have you been doing that on a
13 routine basis?

14 A. For Fifth Third?

15 Q. Yes.

16 A. Since 1999.

17 Q. I'll show you the one for plan year ending
18 6/30/98. I take it from your answer that you played no
19 role in this, but tell me if I'm not correct on that
20 assumption. I'm showing you Exhibit 18.

21 A. I don't recall having any involvement in
22 this.

23 Q. Would you review this form 5500 in order to
24 do the next plan year's form 5500?

25 A. Yes.

1 Q. I'd just ask you about one item, if you would
2 compare it. On page 3 of Exhibit 18, it says the
3 number of participants is 1,649, whereas the form 5500
4 which you prepared the following year says -- well, you
5 tell me how many it says.

6 A. At the beginning of the plan year?

7 Q. Yes.

8 A. 1,696.

9 Q. Do you know what accounted for that
10 difference?

11 A. No, I don't.

12 Q. Do you know whether those -- that increased
13 number would be accounted for by only non-Suburban
14 Fifth Third employees?

15 A. I don't know.

16 Q. Do you know of any Suburban employees who
17 joined the plan only after plan year ending 6/30/98?

18 A. I don't know.

19 Q. Okay. I'll take that one back since you
20 didn't prepare it.

21 A. No, that's the one I did prepare.

22 Q. That's the one you did. Thank you.

23 I'll just ask you to look at Exhibit 17 and
24 ask if you reviewed this form 5500 for plan year ending
25 June 30, 1998 at any time?

1 A. Not that I recall.

2 Q. So you wouldn't need to look at this in order
3 to do the 5500 two years later?

4 A. No.

5 Q. Let me ask you to look at a document which
6 has been previously marked as Exhibit 22.

7 A. (Witness complies.)

8 Q. Exhibit 22 is entitled, Descriptive Timetable
9 for Termination of Suburban Bancorporation, Inc. ESOP.
10 Do you see that?

11 A. Yes.

12 Q. Have you ever reviewed this document prior to
13 today?

14 A. Yes.

15 Q. And for what purpose and what time frame?

16 MR. FISCHER: Objection.

17 A. The purpose was to review all the items in
18 the file for the plan and it was -- I'm not sure of the
19 exact time I reviewed it.

20 BY MR. MEYER:

21 Q. And was your purpose, again, to field any
22 questions from participants about the plan?

23 A. The purpose was to familiarize myself with
24 the plan.

25 Q. Okay. Did you ever field any questions

1 addressed to you by any participants with regard to
2 this timetable?

3 A. Not to my knowledge.

4 Q. Do you know whether this timetable was
5 followed in terminating the plan?

6 A. I don't know.

7 Q. Do you know what Internal Revenue Code
8 section 415 limits are that impinge on terminating an
9 ESOP?

10 MR. FISCHER: Objection.

11 A. No.

12 BY MR. MEYER:

13 Q. Okay. I'll take that back, Exhibit 22.

14 A. (Witness complies.)

15 Q. Let me ask you to review what's previously
16 been identified as Exhibit 20. It's a lengthy
17 document, so I'll first ask you just to look at it
18 before you review it closely and tell me if you
19 recollect ever seeing Exhibit 20 before.

20 A. No, I don't recollect seeing this.

21 Q. Okay. I'll ask you to look at page 3 of
22 Exhibit 20. In the middle of the page, numerical
23 paragraph 4 is entitled, Overview of ESOP. Do you see
24 that?

25 A. Yes.

1 Q. In the middle of the next paragraph, I'll
2 just ask you about a sentence and see if this concept
3 is familiar to you. The plan will continue to cover
4 only former Suburban Federal employees and no other
5 unrelated Fifth Third employees. Do you see that
6 sentence?

7 A. Yes.

8 Q. Has anybody ever described to you this
9 Suburban ESOP as continuing to cover only former
10 Suburban employees and no other unrelated Fifth Third
11 employees?

12 A. No.

13 Q. Is that the first time you've heard of that
14 concept as you sit here today?

15 A. Yes.

16 Q. I'll take that back.

17 A. (Witness complies.)

18 Q. If we can mark in as Exhibit 23.

19 (Plaintiffs' Exhibit 23 marked for
20 identification.)

21 Q. I'll show you what we're marking as
22 Exhibit 23 and ask you to take a look at that document,
23 which is entitled Suburban Bancorporation, Inc.
24 Employee Stock Ownership Plan 1999, Amendment Number 2.
25 Now, have you seen this amendment before

1 today?

2 A. Yes.

3 Q. I'll ask you to look at the second page under
4 subparagraph (b), in particular (b)(i) on page 2,
5 wherein it states that, Each individual who was a
6 participant in the plan immediately prior to the
7 effective time of Suburban Bancorporation, Inc.'s
8 merger into Fifth Third Bancorp and who received any
9 compensation during the plan year ending June 30, 1999
10 shall receive an allocation to his account equal to 3
11 percent of his compensation for such plan year. Do you
12 see that provision?

13 A. Yes.

14 Q. Do you know if that provision was followed?

15 A. Not sure.

16 Q. Did you play any role in that distribution,
17 assuming that it did occur?

18 MR. FISCHER: Objection, form.

19 A. Not to my knowledge.

20 BY MR. MEYER:

21 Q. Okay. Wasn't that your role, to distribute
22 benefits to employees? I thought you defined that as
23 one of your three tasks.

24 A. This is a allocation to employees to their
25 accounts. I was responsible for distributing the

1 account once the employee had requested it.

2 Q. Okay. Who actually did the allocations, to
3 your knowledge?

4 A. The trust department.

5 Q. Do you think that would have been done by
6 Mr. Thamann?

7 MR. FISCHER: Objection to form.

8 BY MR. MEYER:

9 Q. Or somebody under him?

10 A. Yes.

11 Q. Have you ever seen any records of that type
12 of an accounting whereby allocations were made to
13 participants' accounts?

14 A. Yes.

15 Q. What type of document would you see to show
16 those allocations?

17 A. Excel spreadsheet.

18 Q. Any particular name given to that
19 spreadsheet?

20 A. Contribution allocation.

21 Q. Okay.

22 A. Generally.

23 Q. And would that be a list of all participants
24 and their allocations at a particular time frame?

25 A. Yes.

1 Q. In the normal course, is that done on an
2 annual basis?

3 A. It depends.

4 Q. Depending on what events may be occurring
5 with regard to that plan? Is that what you mean?

6 A. No. Depends on the terms of the plan.

7 Q. When those allocations were made in the
8 Suburban ESOP, did you get a copy of the allocations?

9 A. I'm not sure what you're asking.

10 Q. Well, you described that there was a
11 spreadsheet that showed the allocations; is that
12 right?

13 A. For other plans.

14 Q. Not the Suburban ESOP?

15 A. I was not aware what of the Suburban ESOP.

16 Q. So you don't recall ever seeing the
17 allocations in the Suburban ESOP?

18 A. No.

19 Q. I guess you see many allocations in many
20 plans, correct?

21 A. Several plans.

22 Q. And the allocations that you do see, are they
23 on lists of participants along with the amount of the
24 allocation and the date, effective time?

25 A. Yes.

1 Q. Okay. That's what you said was a
2 spreadsheet?

3 A. Yes.

4 Q. You may have told me already, but is there a
5 special name that you give to this kind of a
6 spreadsheet?

7 A. There's no special name. Generally, it's a
8 contribution allocation.

9 Q. And the format is not one name and one
10 allocation and effective time. It's a whole roster of
11 the participants in the plan?

12 A. For the other plans, yes.

13 Q. Do you know if there was such a roster of
14 allocations for the Suburban ESOP?

15 A. I'm not sure.

16 Q. You just don't remember ever seeing one; is
17 that right?

18 A. That's right.

19 Q. You're not saying there isn't such a roster
20 of allocations, just you don't recall seeing one?

21 A. That's correct.

22 Q. Who would generate this roster of
23 allocations?

24 A. The trust department.

25 Q. And in the normal course would the trust

1 department keep documentation such as this for some
2 period of time?

3 A. Yes.

4 Q. Is there a requirement it be kept for so many
5 years?

6 A. I'm not sure.

7 Q. Is there a common practice at Fifth Third for
8 how long such documents are maintained?

9 A. I'm not sure.

10 Q. Would you have had such a document in your
11 office?

12 A. I don't believe so, no.

13 Q. So they wouldn't have sent you a copy of that
14 roster of allocations?

15 A. I don't recall receiving that, no.

16 Q. If you received it, would you just normally
17 keep it with your other Suburban ESOP records?

18 A. Yes, I would have.

19 Q. So you kept your records as per plan,
20 correct?

21 A. Yes.

22 Q. Referring once again to page 2 of Exhibit 23
23 of 1999, Amendment Number 2, the reference to a
24 3 percent allocation. Do you know why that was done
25 for these particular participants?

1 A. No.

2 Q. So you didn't play any role in that
3 decision?

4 A. No.

5 Q. Do you know who did devise this amendment?

6 MR. FISCHER: Objection to devise.

7 A. I don't understand your question.

8 BY MR. MEYER:

9 Q. Who prepared this amendment, to your
10 knowledge?

11 A. Legal counsel.

12 Q. Okay. That would be Keating's firm?

13 A. Yes.

14 Q. Who do you deal with in the legal
15 department?

16 A. At Keating?

17 Q. Yes.

18 A. Steve Goodson.

19 Q. Based upon your relationship with
20 Mr. Goodson, would you conclude that Mr. Goodson
21 prepared this 1999 Amendment Number 2?

22 MR. FISCHER: Objection.

23 A. I would conclude either he or someone under
24 him.

25 BY MR. MEYER:

1 Q. Okay. The five or six years that you've been
2 at Fifth Third, have you dealt with any other ESOPs?

3 A. Yes.

4 Q. How many?

5 A. Two others.

6 Q. And are they ESOPs that originated with a
7 institution which was acquired by Fifth Third or were
8 they initiated by Fifth Third itself?

9 MR. FISCHER: Objection.

10 A. One was an acquisition plan, one was Fifth
11 Third's plan.

12 BY MR. MEYER:

13 Q. What's the name of the plan that was part of
14 an acquired institution?

15 A. Enterprise Federal Eastside.

16 Q. Is that still an active plan or not?

17 A. No.

18 Q. Was that terminated as part of the merger or
19 did that continue on for some period of time?

20 A. I don't recall.

21 Q. What's the time frame of that one?

22 A. I don't know.

23 Q. Was it terminated while you were there?

24 A. Yes.

25 Q. Was it terminated before or after the

1 Suburban plan?

2 A. After.

3 Q. Do you know if Fifth Third employees could
4 participate in that plan?

5 A. I'm not sure.

6 Q. Are you aware that Fifth Third employees
7 could participate in the Suburban ESOP?

8 A. Yes.

9 Q. And what's the other ESOP that you have dealt
10 with since you've been there over the last five or six
11 years?

12 A. A Fifth Third 401(k) plan.

13 Q. That is also an ESOP?

14 A. Has an ESOP feature to it.

15 MR. FISCHER: Objection, yeah.

16 BY MR. MEYER:

17 Q. And what group of employees is eligible --
18 eligible to participate in that aspect of the 401(k) --
19 the ESOP aspect of the 401(k)?

20 MR. FISCHER: Objection.

21 A. All employees after one month of service.

22 BY MR. MEYER:

23 Q. When was that initiated?

24 A. I don't recall.

25 Q. Was it early in your employment there or was

1 it before your employment?

2 A. Prior to my employment.

3 Q. Do you know whether the participants in the
4 Suburban ESOP who were Fifth Third employees and who
5 received an option of rolling it over into a Fifth
6 Third plan, was the option to roll it over into the
7 Fifth Third ESOP?

8 A. The option was to roll it over into a Fifth
9 Third profit sharing plan. The profit sharing plan
10 consists of profit sharing piece and a 401(k) piece.
11 They're both under profit sharing plan.

12 Q. So if an employee exercised the option to
13 roll it over into the Fifth Third plan, would that be
14 in the ESOP portion of the Fifth Third plan?

15 MR. FISCHER: Objection. Do you understand
16 the question?

17 THE WITNESS: Yeah.

18 MR. FISCHER: Okay. Go ahead.

19 A. I'm not sure. It could be.

20 BY MR. MEYER:

21 Q. Where would you -- where would you find out
22 if that actually did occur in one or more instances?

23 A. I'd have to take a look at someone's account
24 and see if -- what transpired.

25 Q. So let me know about this option in a little

1 bit more detail. You said before that the letters
2 advised the employees of an option to roll over their
3 shares of Fifth Third stock into a Fifth Third plan or
4 another institution.

5 A. Right.

6 Q. Were there various options with regard to
7 Fifth Third plans for those who wished to roll over
8 their Fifth Third stock which they had held in the
9 Suburban ESOP?

10 A. I don't recall the details.

11 Q. Okay. I mean, what would determine that --
12 what those options would be?

13 A. The plan document for the profit sharing plan
14 would determine how the rollovers would be put into a
15 person's account.

16 Q. Would that be explained by you in your
17 notice, letter to the employees where you tell them
18 what options they have?

19 A. I don't recall.

20 Q. So the only way to answer this question,
21 then, would be on an account by account basis to see if
22 the particular participant's account was rolled over
23 into the Fifth Third ESOP?

24 MR. FISCHER: Objection.

25 A. That would be one way.

1 BY MR. MEYER:

2 Q. Is there another way?

3 A. Examine the profit sharing plan document to
4 determine.

5 Q. Which plan, the Suburban ESOP or the Fifth
6 Third ESOP?

7 MR. FISCHER: Objection.

8 A. The Fifth Third profit sharing plan.

9 BY MR. MEYER:

10 Q. What you would be looking for would be what
11 eligibility requirements to be in the Fifth Third
12 ESOP?

13 A. Which -- no.

14 Q. What would you be looking for?

15 A. Be looking for how rollovers are deposited
16 into the plan -- in the Fifth Third profit sharing
17 plan.

18 MR. MEYER: Pat, if you'll give me a
19 couple minutes with John, we might terminate
20 here.

21 MR. FISCHER: Sure.

22 (A recess was taken from 2:30 to 2:34.)

23 MR. MEYER: Mr. Levo, I think that's all the
24 questions we have, unless you can think of any one
25 I should have asked you.

1 THE WITNESS: No.

2 MR. FISCHER: Thanks.

3
4 _____
RICHARD LEVO

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7 - - -
8 DEPOSITION CONCLUDED AT 2:34 P.M.

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Elite Reporting Agency, LLC
513-233-3000

C E R T I F I C A T E

STATE OF OHIO :
 : SS
 COUNTY OF HAMILTON :

I, Patti Stachler, RMR, CRR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do certify that before the giving of his deposition, RICHARD LEVO was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by RICHARD LEVO; that I am neither a relative of nor employee of any of the parties or their counsel, and have no interest whatever in the result of the action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this _____ day of _____, 2005.

My commission expires: Patti Stachler, RMR, CRR
 October 5, 2008. Notary Public - State of Ohio

E R R A T A S H E E T

DEPOSITION OF: RICHARD LEVO
TAKEN: MAY 31, 2005

Please make the following corrections to my deposition transcript:

Page	Line Number	Correction Made
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Witness Signature

Date